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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Avenue, NW
Washington, DC 20580

Petitioner,

v.

RESPONSE MAKERS, LLC,
11230 Sorrento Valley Road, Suite 100
San Diego, California 92121

Respondent.

'10 CV 1768WQH

BLM

Case No.

PETITION OF THE FEDERAL TRADE COMMISSION FOR AN ORDER TO ENFORCE
A CIVIL INVESTIGATIVE DEMAND



Preamble

Petitioner, the Federal Trade Commission ("FTC" or "Commission") petitions this Court, pursuant to Sections 16 and 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 56, 57b-1, and 28 U.S.C. §§ 1337 and 1345, and Fed. R. Civ. P. 81 (a)(5), for an order requiring respondent, Response Makers LLC ("Response Makers"), to produce responses to written interrogatories and to document requests, and a sworn verification as to these responses, in response to a Commission Civil Investigative Demand ("CID"), a type of administrative subpoena, issued to Response Makers on July 27, 2010. The CID was issued in the course of a non-public investigation concerning possible violations by Response Makers of Sections 604(f), 607(a), 607(e)(1), and/or 607(e)(2) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681b(f), 1681e(a), 1681e(e)(1), 1681e(e)(2), and of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), with respect to, *inter alia*, the sale and marketing of prescreened consumer report information.

Response Makers' absolute failure to comply with the CID is impeding the Commission's investigation. If, based on its investigation, the Commission has reason to believe that violations of the FTC Act or the FCRA have occurred, the Commission may seek monetary civil penalties and injunctive relief or other equitable relief under the FCRA, 15 U.S.C. §§ 1681 - 1681x, as well as injunctive or other equitable relief under the FTC Act, §§ 45(a), 53(b).

The Declaration under penalty of perjury of Katherine Armstrong, which verifies the allegations of this Petition, is attached hereto as Petition Exhibit (Pet. Exh.) 1.

Petition Allegations

In support of its Petition, the Commission alleges as follows:

1. The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

2. The Commission likewise is authorized and directed to enforce the FCRA which, in Section 621, provides that “a violation of any requirement or prohibition imposed under the [FCRA] shall constitute an unfair or deceptive act or practice ... in violation of section 5(a) of the FTC Act.” 15 U.S.C. §1681s.

3. Section 3 of the FTC Act, 15 U.S.C. § 43, empowers the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices and management of, any person, partnership or corporation engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 9 of the FTC Act, 15 U.S.C. § 49, authorizes the Commission to issue subpoenas to compel the testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to require by CID the production of documents or other information relating to any Commission law enforcement investigation. *See also* 15 U.S.C. § 1681s(a)(1) (providing the Commission with the same investigatory authority for violations of the FCRA).

4. This Court also has jurisdiction to enforce the Commission’s duly issued CIDs, including

1 the CID issued to Respondent, under Section 20(e) of the FTC Act, which provides, in pertinent part:

2 Whenever any person fails to comply with any civil investigative demand
3 duly served upon him under this section, or whenever satisfactory copying
4 or reproduction of material requested pursuant to the demand cannot be
5 accomplished and such person refuses to surrender such material, the
6 Commission, through such officers or attorneys as it may designate, may
7 file, in the district court of the United States for any judicial district in
8 which such person resides, is found, or transacts business, and serve upon
9 such person, a petition for an order of such court for the enforcement of
10 this section.

11 15 U.S.C. § 57b-1(e).

12 5. Response Makers is a California limited liability company. Eric Rothchild is the
13 President and Principal Owner. Response Makers is located at 11230 Sorrento Valley Road, Suite 100,
14 San Diego California, 92121. Pet. Exh. 1, ¶ 4. Response Makers is engaged in, and its business
15 affects, "commerce" as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

16 6. On April 15, 1999, the Commission issued a "Resolution Directing Use of Compulsory
17 Process in Nonpublic Investigation Into the Acts and Practices of Unnamed Persons, Partnerships and
18 Corporations Engaged in Acts or Practices in Violation of 15 U.S.C. § 1681 *et seq.*, and/or 15 U.S.C. §
19 45. The resolution authorized all compulsory process available to the Commission to be used to
20 investigate, among other things, "whether persons, partnerships or corporations may be engaging in, or
21 have engaged in, acts or practices in violation of the FCRA, U.S.C. § 1681 *et seq.*, and/or Section 5 of
22 the FTC Act, 15 U.S.C. § 45, ... relating to information furnished to consumer reporting agencies,
23 maintained in the files of consumer reporting agencies, or obtained as a consumer report from a
24 consumer reporting agency." Pet. Exh. 2.

25 7. On July 27, 2010, pursuant to the authority of the investigatory resolution, the
26 Commission issued a CID seeking answers to interrogatories and documents concerning Response
27 Makers' business practices involving the use of prescreened consumer reports. Pet. Exh. 2. The CID
28

1 was served on July 28, 2010, and directs Response Makers to submit the response materials by August
2 4, 2010. Pet. Exh. 3; Pet. Exh. 2; Pet. Exh. 1, ¶7.

3
4 8. Weeks earlier, an FTC investigator spoke with Response Makers' President Eric
5 Rothchild about the Commission's investigation and the Commission's earlier efforts to serve a May 5,
6 2010 CID at a different address. In that conversation, Mr. Rothchild confirmed that Response Makers
7 would accept service of the CID at the Sorrento Valley Road address. Following that initial contact,
8 FTC staff again sent the CID, and made a number of unsuccessful attempts to contact Mr. Rothchild by
9 telephone concerning the Commission's need for responsive materials. Pet. Exh. 1, ¶ 8.

10
11 9. On July 29, 2010, FTC staff left a message for Mr. Rothchild reminding him that the
12 return date for the CID was August 4, 2010. On the same day, Mr. Rothchild left a message for Ms.
13 Armstrong, advising that he had received the CID and stating that he would cooperate in the
14 Commission's investigation. On August 4, 2010, after yet another unsuccessful attempt to reach Mr.
15 Rothchild directly, an FTC staff attorney left a voicemail reminding Mr. Rothchild that the responses to
16 the CID were due by close of business that same day, and that, failing a response, the Bureau of
17 Consumer Protection would have to ask the Commission's Office of General Counsel to institute CID
18 enforcement proceedings. Pet. Exh. 1, ¶ 9.

19
20
21 10. Despite repeated efforts, FTC staff has not been able to speak directly with Mr. Rothchild
22 regarding the failure of Response Makers to respond to the CID. Furthermore, despite Mr. Rothchild's
23 promise to cooperate in the investigation, the Commission has not received any of the information and
24 documents requested by the CID. Pet. Exh. 1, ¶ 10.

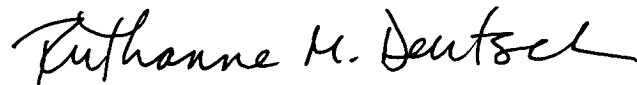
25
26 11. Response Makers has not objected to the CID on any ground, and has not petitioned the
27 Commission to quash or limit the CID, as provided in FTC Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1). Pet.
28 Exh. 1, ¶ 11.

1 Respectfully submitted,

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Federal Trade Commission

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ruthanne Deutsch
FTC
600 Pennsylvania Ave.
N.W.
Washington, DC 20580
921-617-6070

DEFENDANTS

Response Makers, L1000 AUG 24 PM 12:11

County of Residence of First Listed Defendant: San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED. DEPUTY

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 15 U.S.C. §§ 56, 57b-1 and 28 U.S.C. §§ 1337 and 1345

Brief description of cause:

Petition for an Order to Enforce a Civil Investigative Demand

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

08/24/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

No Fee Required